

Appln. No.: 10/760,324
Amendment Dated: January 8, 2007
Reply to Office Action of: October 6, 2006

100085-00002

Amendments to the Drawings:

The attached sheets of drawings include changes to Figures 1B, 2B, 3B, and 4B as indicated in the Office Action dated October 6, 2006. These sheets replace the original sheets 1 and 2.

Attachment: Two (2) replacement drawing sheets

Remarks/Arguments:

Claims 1-18 were pending in this application. Claims 1-5 has been canceled, and claim 15 has been withdrawn. Thus, claims 6-14 and 16-18 are currently under consideration.

Claims 6 and 16 have been amended. The amendments to the claims are all supported by the specification as filed. Specifically, each amended claim was amended to recite "wherein the upper surface of the board is adapted to permit the user to distribute the user's weight to any position on the upper surface." Support for the amendments to the claims resides in the specification at page 15, lines 4-11, and the figures, specifically FIGS. 8 and 9.

Furthermore, the claims now recite that the substantially spherical balancing insert has a circumference, and the concave region encompasses an area greater than an area defined by the circumference of the balancing insert. These amendments are supported by the application as filed in the specification at page 10, lines 15-18, and in the figures at FIGS. 7A, 8, and 9.

I. ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT

In response to a restriction requirement, a provisional election was made without traverse to prosecute claims 1-14 and 16-19. This election is affirmed, accordingly claim 15, the non-elected claim, has been withdrawn.

II. DRAWINGS

The drawings were objected to for failing to include reference signs. Replacement sheets are enclosed with have been corrected to include reference signs 114, 214, 314, and 414 to FIGS. 1B, 2B, 3B, and 4B respectively. Withdrawal of the objection is therefore requested.

III. INFORMATION DISCLOSURE STATEMENT

In a good faith attempt to satisfy any duty to disclosure information, the applicant and their representatives provided the best available copy of all the listed references with the Information Disclosure Statement.

IV. CLAIM REJECTIONS UNDER 35 U.S.C. § 102(B)

A. Rejection over U.S. Patent No. 3,024,021 issued to Coplin et al.

Claims 1-4, 6-9, 11, 12, and 16 were rejected as anticipated by U.S. Patent No. 3,024,021 issued to Coplin et al. The applicant respectfully traverses. Not in acquiescence to the rejection, but merely to expedite prosecution, claims 1-4 have been cancelled, rendering the rejection as applied to these claims moot. As amended, claim 6 recites:

A balance training device for a user to maneuver by balancing the user's weight on the device, comprising a board and a single substantially spherical balancing insert, the balancing insert having a circumference, the board comprising an upper surface and a lower surface, wherein the lower surface comprises a concave region extending into the board below the upper surface, the concave region adapted to receive the balancing insert, whereby the board rides over the balancing insert, and wherein the upper surface is adapted to permit the user to distribute the user's weight to any position on the upper surface and the concave region encompasses an area greater than an area defined by the circumference of the balancing insert.

Claim 16 was also amended to include language regarding the concave region of the lower surface of the board. Currently claims 6-14 and 16-19 all include language specifying that the concave region of the lower surface is greater in size than an area defined by the circumference of the insert. This aspect is not disclosed, suggested, or taught by Coplin et al. Coplin et al. discloses a toy in which a standing plate has a rounded indentation "of a size to receive both the rubber pad 12 and the upper portion of the ball 8." Coplin et al., column 2, lines 9-12. Additionally, the drawings show that the indentation does not extend beyond the diameter of the ball, and only a small portion of the ball is accommodated by the indentation.

Coplin et al. provides a plate with a slight indentation that receives only a fraction of the top portion of the ball, whereas the present claims recite a concave region that is larger than the area defined by the spherical insert's circumference. Accordingly, Coplin et al. does not

anticipate the claims as amended because not each of the claim elements were disclosed. Withdrawal of the rejection is respectfully requested.

B. Rejection over U.S. Patent No. 3,488,049 issued to Sasser, Jr. et al.

Claims 1 and 5 were rejected as anticipated by U.S. Patent No. 3,488,049 issued to Sasser, Jr. Not in acquiescence to the rejection, but merely to expedite prosecution, claims 1 and 5 have been cancelled rendering the rejection moot. Accordingly, withdrawal of this rejection is respectfully requested.

C. Rejection over U.S. Patent No. 5,415,589 issued to Hall, Jr.

Claims 6 and 13 were rejected as anticipated by Hall, Jr. The applicant respectfully traverses. Hall, Jr. is directed towards a motion device specifically designed for use in amusement rides. Claim 6, from which claim 13 depends, specifically recites that the device comprises a board and a *single* substantially spherical balancing insert. Hall, Jr. discloses a device in which multiple bearings separate two interacting components. The Office Action infers that the bearings, as inherently spherical, anticipate the spherical insert element of claim 6.

Claim 6 recites a device with a single spherical insert. Hall, Jr. does not disclose or suggest a device comprising a single spherical insert. The device disclosed by Hall, Jr. requires multiple bearings to separate the teetering member and the base, and therefore does not disclose or suggest the invention as claimed. Accordingly, withdrawal of the rejection is respectfully requested.

IV. CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 6, 10, 14, and 16-19 were rejected as unpatentable over US Patent No. 3,488,049 issued to Sasser, Jr. in view of US Patent No. 4,191,371 issued to Armer. The applicant respectfully traverses the rejection. The Office Action asserts that "it would have been obvious to a person of ordinary skill in the art to substitute Sasser, Jr.'s roller insert with Armer's spherical insert." To the contrary, Sasser, Jr. specifically teaches the roller configuration as beneficial to preventing undesired motion when using the device (see Sasser, Jr., col. 1, lines 45-52 and line 64-col. 2, line 13).

It is well established that in making rejections over the prior art, the Patent Office "may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057, 19 L. Ed. 2d 857, 88 S. Ct. 811 (1968).

Sasser, Jr. teaches away from adding a spherical insert, because a spherical insert would inherently increase the degrees of motion. Sasser, Jr. emphasizes that its roller configuration is an improvement over prior devices, such as the "Bongo Board" (see Sasser, Jr., col. 1, line 39-45) because it restricts motion and eliminates motion that is too challenging for novice users. Specifically noted are the limits of motion assured with the configuration as disclosed by Sasser, Jr.

Because Sasser, Jr. teaches away from increased motion in a balancing device, a person of ordinary skill would not have combined the Sasser, Jr. board with a spherical insert. Additionally, Armer, Jr. teaches a device with a foot support raised above the external concave surface. The foot support serves to limit the user's weight distribution, thus restricting motion to the center of the device. Contrary to the teachings of both Sasser, Jr. and Armer, Jr., the present claims recite a device and method including a board adapted to permit the user to distribute the user's weight to any position on the upper surface, making the device and method more challenging to a user. Because both Sasser, Jr. and Armer, Jr. teach devices that minimize the balancing challenge to users, it would not have been obvious to one of ordinary skill in the art to combine their teachings to arrive at the present invention.

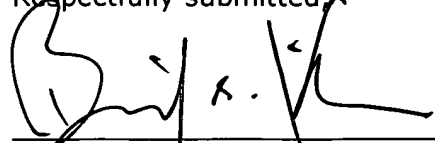
V. CONCLUSION

All issues raised by the Office Action are believed to have been addressed herein. Claims 1-5 have been canceled. Claims 6 and 16 have been amended, and claim 15 has been withdrawn from consideration. Thus, claims 6-14 and 16-19 are pending and in condition for allowance. Reconsideration of all outstanding rejections and a favorable action is earnestly requested. If a telephone conversation with the applicant's representative would facilitate prosecution, please contact the applicant's representative at the phone number below.

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Respectfully submitted,



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PDP/rls

Enclosures: Transmittal Letter
Submission of Replacement Drawings
Replacement drawing sheets (2)

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